IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5799 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GAMECHA VAGHARI ASHOK SHAMBHUBHAI

Versus

DISTRICT MAGISTRATE BHAVNAGAR

Appearance:

MS DR KACHHAVAH for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/02/2000

ORAL JUDGEMENT

#. Heard Ms.D.R.Kachchhwa, learned advocate for the petitioner and Mr. K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 26-5-1999 passed by

respondent No.1 - The District Magistrate, Bhavnagar against the petitioner in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C which is on running page 17 interalia indicate that in all 5 prohibition cases were registered against the petitioner at Mahuva police station in between 29-4-98 to 11-5-99. That in each case, the country made liquor and vehicles were seized from the possession of the petitioner / detenu. That three cases are pending for trial in the Court while last two cases are pending for further investigation. Over and above that, three witnesses on assurance of their anonymity have given statement dated 17-5-99 regarding the anti social activities of the petitioner and have referred to alleged incidents 20 days prior to the statement, one week prior to the statement and one and half months prior to the statement. That on the basis of the said material, the respondent No. 1 as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind inasmuch as the detaining authority has failed to consider the aspect of less drastic remedy like cancellation of bail under Section 437(5) of CrPC.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that the petitioner was released on in all five cases registered against him on different dates. That the grounds of detention is devoid of any fact showing the status of the petitioner on the date of passing of the order and it also does not disclose whether any attempt has been made to claim cancellation of bail with a view to prevent the petitioner from continuing his alleged anti social activities. In view of the same, it is difficult to sustain the order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 26-5-1999 passed by respondent No. 1 - The District Magistrate, Bhavnagar against the petitioner is hereby quashed and set aside. The petitioner - GAMECHA VAGHARI ASHOK SHAMBHUBHAI is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 1-2-2000 [A.K.Trivedi, J.]

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